BAIL SLIP

Rakkia Gounder, (Accused No.1 in SC.No.141/2000 on the file of the Principal Sessions Court, Erode) was released on bail by the order of this court dated 21.12.2000 and made in Crl.MP.No.8374/00 in CA.No.1052/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl. Appeal No.1052 of 2000

Rakkia Gounder .. Appellant/Accused No.1

Versus

State by Inspector of Police,
Uthukuli Police Station,
Erode District. .. Respondent/Complainant

For Appellant : Mr.N.Manokaran

For Respondent : Mr.N.Kumanan
Government Advocate

PRAYER: Appeal under section 374 (2) of Crl PC against the conviction imposed in judgment dated 07.11.2000 made in S.C.No.141 of 2000 on the file of the Principal Sessions Court, Erode.

J U D G M E N T

The appellant along with his wife A-2 was charged for an offence punishable under Sections 302 and 302 r/w 109 IPC. On conclusion of the trial, the second accused was acquitted of the charge levelled against her. The appellant first accused alone was convicted for an offence punishable under Section 304(II) IPC and sentenced to undergo rigorous imprisonment for five years. Aggrieved against that the present appeal.

2. The case of the prosecution is that the deceased is the coparcener of the appellant. The parents of the deceased were having 1/6th share of the property. While grazing the cattle, there was wordy quarrel between the wife of the appellant and the deceased on previous occasions and in pursuance of which, on 25.03.2000 at about

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5.00 pm the appellant armed with a knife (soori kathi) alleged to have stabbed the deceased on his chest, resulting in his death.

3. P.W.1 to P.W.3 were examined as eye witnesses in the case. P.W.1 is the daughter of the deceased. P.W.2, the child witness, is the grand son of the deceased and P.W.3 is the servant of the deceased. P.W.4 is the Village Administrative Officer (VAO), who speaks about the arrest and recovery. P.W.5 is the photographer. P.W.6 is the postmortem Doctor who has conducted the postmortem on the dead body of the deceased on 26.03.2000 at 11.15 a.m and found the following injuries:

> "External injuries:
>
> 1) Stab wound 4 cm x 2 cm x 16 cm on the right side of the chest, 7 cm above and 2 cm medial to the right nipple. The wound goes downwards posteriorly and medially.
>
> 2) Incised wound 1 ½ cm x ½ cm x 1 ½ cm on the right lateral aspect of chest. 10 cms below and lateral to the right nipple."

The Medical Officer is of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injury to vital organs lungs and liver. Ex.P-7 is the postmortem certificate. It has been further opined that all internal injuries would be the result of the injury No.1, which could be caused by a weapon like M.O.6. Injury No.2 is superficial in nature. Injury No.2 may be caused by a person slipping down on a sharp object on the ground. P.W.7 is the police constable who has delivered the FIR to the investigating officer. P.W.8 is the postmortem constable. P.W.9 is the police constable working in the out post Government Hospital, Erode, who intimated the death of the deceased. The death intimation is Ex.P-11. P.W.10 is the Magistrate Court Clerk. P.W.11 is the Sub Inspector of Police who received the complaint from P.W.1 on 25.03.2000 at about 8.00 p.m and registered a case in Crime No.116 of 2000 under Section 302 r/w 34 IPC. Ex.P-8 is the FIR. P.W.12 is the Inspector of Police who took up investigation. On receipt of Ex.P-8 on 25.03.2000 and on receipt of the death intimation from P.W.9, he visited the scene of occurrence and in the presence of P.W.4, prepared the observation mahazar-Ex.P-2 and rough sketch-Ex.P-18. Thereafter on 26.03.2000 between 6.30 p.m and 9.30 p.m examined P.W.1 to P.W.3 and conducted inquest over the dead body of the deceased. Ex.P-17 is the inquest report. The dead body of the deceased was sent for postmortem through P.W.8 with the requisition Ex.P-6. M.Os.2 to 5 blood stained earth, sample earth and blood stained chappals, respectively have been recovered under Ex.P-3 mahazar. He has arrested the accused and recorded his statement Ex.P-4 leading to recovery of M.O.6, blood stained knife, under a cover of mahazar-Ex.P-5. P.W.12 after examining the other witnesses and observing the formalities filed the final report for an offence punishable under Section 302 r/w 34 IPC.

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4. On conclusion of the trial, the accused was questioned under Section 313 Cr.P.C for which the appellant has admitted the wordy quarrel between him and the deceased. It has been stated that the deceased attempted to beat him with the stick and to ward off such attack, the appellant has used M.O.6 and as the deceased was moving it has reached the chest, resulting in the injury.

5. Learned trial Judge on a perusal of the ocular testimony of the evidence and exhibits marked and after hearing the counsel for the prosecution and the defence, convicted the appellant as aforementioned.

6. The learned trial Judge observed that the appellant has caused a single injury on the chest after wordy altercation and in such circumstances, an offence under Section 302 IPC is not made out. Further on the facts and circumstances, the trial Court convicted the appellant under Section 304 Part II IPC and sentenced him to undergo imprisonment for five years.

7. Learned counsel appearing for the appellant submitted that P.W.1 to P.W.3, the eye witnesses of the case are interested witnesses. P.W.1 is the daughter of the deceased. P.W.2 is the grand son and P.W.3 is the maid of the deceased. On the date of occurrence, the age of the accused was 65 and as on today, his age is 72. The son of the appellant has deserted him and the appellant is living in the custody of his daughter. The appellant is suffering from ailments due to advancement of his age. Though his age has been recorded as 65 during trial, it was about 72 even at the time of occurrence and as on today, he is about 80 years. The quarrel and the stabbing of the deceased was accepted even during the course of trial, in his statement, by the appellant. The manner of attack only has been disputed. The wordy quarrel on account of grazing of the cattle is not in dispute. In such circumstances, sought for leniency, while imposing the sentence.

8. Learned counsel for the appellant relied on the following judgments:

Sunder Singh Vs. State of Rajasthan (AIR 1988 SC 2135)

State of Punjab Vs. Mohinder Singh (1993 Crl.L.J 3903)

Giani Ram Vs. State of Haryana and others (AIR 1995 SC 2452)

Budhan Singh and others Vs. State of Bihar (2006(4) SCC 740)

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9. Learned counsel appearing for the appellant submits that the appellant has already undergone imprisonment of 55 days and in view of the facts and circumstances of the case, the same may be treated as sentence period already undergone.

10. The appellant is none other than the cousin of the deceased. Though they have quarrelled on account of grazing the cattle in their fields, the occurrence took place in a spur of the moment. I do not find any material to substantiate premeditation and intention to commit the offence. All the eye witnesses have consistently stated that there was wordy quarrel prior to the occurrence. The accused in his 313 Cr.P.C statement fairly accepted such quarrel and pleaded the right of private defence. At any rate the second injury is a superficial injury and the appellant has caused a single stab, resulting in the death of the deceased.

11. The sentencing aspect of 304 Part II reads as follows:

> "that imprisonment for either description for a term which may extend to 10 years, or with fine or with both, if the act is done with the knowledge that it is likely to cause death. But without any intention to cause death or to cause such bodily injury as is likely to cause the death."

12. In the instant case, the intention to cause the death cannot be imputed to the appellant. However, it could be inferred that the appellant had knowledge that the injury on the vital part of the body of the deceased would cause death. In such circumstances, the appellant has been rightly convicted for an offence punishable under Secitn 304(2) IPC.

13. In the decisions relied on by the learned counsel for the appellant, as regards the sentencing policy, the Supreme Court as an exceptional case has reduced the sentence keeping in mind, the advanced age of the accused therein. In the present case, the occurrence itself had taken place during 2000 and the appellant has already undergone imprisonment for 55 days. No useful purpose may be served by sending the appellant to jail, as he is aged and sick. On instructions, the learned counsel appearing for the appellant submits that the daughter of the appellant is willing to pay a compensation of Rs.20,000/- to P.W.1, the daughter of the deceased.

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14. In such circumstances, as an exceptional case, while confirming the conviction under Section 304 part II IPC, the sentence imposed on the appellant is reduced to one of imprisonment already undergone. The daughter of the appellant is accordingly directed to pay a sum of Rs.20,000/- to P.W.1 within a period of six weeks from the date of receipt of a copy of this order. The appeal is disposed of on the above terms.

csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, Perundurai.

2. do thro' The Chief Judicial Magistrate, Erode.

3. The Principle Sessions Judge, Erode.

4. The Superintendent, Central Prison, Coimbatore.

5. The Public Prosecutor, High Court, Madras.

6. The Inspector of Police, Uthukuli Police Station, Erode District.

+ 1 cc to Mr. N. Manokaran, Advocate SR No. 1280

KSJ(CO)
SR/3.2.2007

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